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JUL 28 2010

SAN DIEGO  
COUNTY GRAND JURY



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JUL 26 2010

THE CITY OF SAN DIEGO

COUNCIL PRESIDENT BENJAMIN HUESO

DISTRICT EIGHT

July 26, 2010

Honorable Kevin A. Enright  
Presiding Judge  
San Diego County Superior Court  
Main Courthouse, Third Floor  
220 West Broadway  
San Diego, CA 92101

**Re: City Council Response to 2009/2010 San Diego County Grand Jury Report  
"Ethical Political Practices: Enforcement of Campaign and Lobbying Laws"**

Dear Judge Enright:

Persuant to California Penal Code Section 933.05 (a), (b), and (c), the City of San Diego provides the attached response to the findings and recommendations in the above-entitled Grand Jury Report. On July 12, 2010, the City Council voted to approve the recommendations contained in the enclosed Independent Budget Analyst Report Number 10-61 dated June 29, 2010.

The Grand Jury Report included eight Findings and five Recommendations. A summary of the enclosed City Council Responses:

**Finding with Response**

**Finding 1:** *Without the protections afforded by being designated as an independent entity in the City Charter, the San Diego City Ethics Commission is subject to elimination by repeal of the ordinance that established it.*

**Response:** Partially Disagree because designation as an independent agency is not the only protection afforded to the Commission in regards to elimination.

**Finding 2:** *Some officials who have been fined for minor violations have expressed a concern that they may be perceived as unethical.*

**Response:** Agree.

ORIGINAL



**Finding 3:** *The majority of the activity of the Ethics Commission deals with monitoring compliance with the City's election campaign and lobbying laws and providing training in those laws.*

**Response:** Partially Disagree. Statistics provided by the Ethics Commission on the number of complaints received and time spent on education confirm that the Grand Jury's statement is correct for calendar year 2009. However, the data can vary from year to year.

**Finding 4:** *A change of the name of the Ethics Commission to something analogous to that of the State's Fair Political Practices Commission would allay the concerns of City officials and more accurately reflect the actual work of the Commission.*

**Response:** Agree.

**Finding 5:** *The power to subpoena witnesses granted to the Ethics Commission by ordinance is provided only for administrative hearings and does not extend to investigations.*

**Response:** Agree.

**Finding 6:** *The power to subpoena witnesses for formal investigations would streamline the process and could eliminate the need for more costly administrative hearings.*

**Response:** Disagree. When this issue was discussed at the October 13, 2008 City Council hearing, and at the September 16, 2009 Rules Committee meeting, the Executive Director and Commissions of the Ethics Commission spoke to the benefits of issuing subpoenas. However, the City Attorney's Office cautioned that the expansion of subpoena authority should not be "granted lightly." On September 16, 2009, the Rules Committee took no action. Since that time, no further discussion has occurred on this issue.

**Finding 7:** *The two vacancies on the seven member Ethics Commission endanger its ability to levy fines and to establish a quorum for its meetings.*

**Response:** Agree.

**Finding 8:** *The State Fair Political Practices Commission is not equipped to perform regular audits of County elections, does not have sufficient staff to investigate conflict of interest allegations against local officials, and does not enforce City and County lobbying laws.*

**Response:** Agree.

**Recommendations with Responses**

**Recommendation 10-01:** *Place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent body.*

**Response:** Will not be implemented because Council does not consider this expensive undertaking a necessary or desired action. The Ethics Commissions' independence is protected by the deliberative and open process that would allow the public and all stakeholders ample opportunity to comment on proposed changes.

**Recommendation 10-02:** *Enact an ordinance changing the name of the Ethics Commission to the San Diego Political Practices Commission, or a substantially similar name, to be more indicative of its mission and activities.*

**Response:** Requires further analysis; this item will be docketed for discussion at a Rules Committee meeting this fall.

**Recommendation 10-03:** *Enact an ordinance amending Chapter 2, Article 6, Division 4 of the San Diego Municipal Code to allow the Ethics Commission to issue witness subpoenas during Commission investigation with an affirmative vote of at least four Commission members. Said amendment should contain safeguards to protect the rights of those witnesses.*

**Response:** Will not be implemented, as it was discussed at the September 16, 2009 Rules Committee meeting and no affirmative action was taken.

**Recommendation 10-04:** *Docket a discussion of proposed changes in the method of appointing Ethics Commissioners at an upcoming meeting of the Rules Committee (or other appropriate Council Committee).*

**Response:** Will be implemented in the future: and will be docketed for discussion at a Rules Committee meeting this fall.

**Recommendation 10-05:** *Appoint or re-appoint Commission members to fill all existing vacancies by the present method of making such appointments.*

**Response:** Has been implemented and will be implemented in the future.

Please feel free to contact my office if you have any further questions.

Sincerely,



Benjamin Hueso

July 26, 2010  
City Council Response  
to Grand Jury Report | 3

Cc: Mayor Jerry Sanders  
Honorable Members of the San Diego City Council  
Chief Operating Officer Jay Goldstone  
City Attorney Jan Goldsmith  
Independent Budget Analyst Andrea Tevlin  
City Clerk Elizabeth Maland  
Director of Administration Debra Fischle-Faulk  
San Diego Grand Jury Foreperson Victoria D. Stubblefield

Enclosures: Independent Budget Analyst Report No. 10-61; City of San Diego Resolution Number R-305970, dated July 12, 2010 Approving the City Council's Response to the 2009-2010 San Diego County Grand Jury Report Titled "Ethical Political Practices – Enforcement of Campaign and Lobbying Laws"

BH:mg



## THE CITY OF SAN DIEGO

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### OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** June 29, 2010

**IBA Report Number:** 10-61

**City Council Meeting Date:** TBD

**Item Number:** TBD

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# Response to Grand Jury Report “Ethical Political Practices – Enforcement of Campaign and Lobbying Laws”

## OVERVIEW

On April 27, 2010 the San Diego County Grand Jury issued a report to the City Council, Mayor, and San Diego County Board of Supervisors entitled “Ethical Political Practices – Enforcement of Campaign and Lobbying Laws.”

The Grand Jury Report assessed a number of issues related to the City’s Ethics Commission and included eight findings and six recommendations. One of the recommendations (10-06) is addressed to the San Diego County Board of Supervisors thus falling outside of the City’s jurisdiction. The City Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on each of the findings and recommendations relating to the City made in the Grand Jury Report by July 26, 2010. The IBA has developed draft responses on behalf of the City Council for each of the findings and recommendations presented in the Grand Jury Report.

In preparing the proposed responses, the IBA has discussed with the City Attorney’s Office staff and Ethics Commission staff factual information regarding current regulations which govern the Commission. The proposed responses address the Grand Jury findings and recommendations as directly as possible based on factual information, previous Council or Committee actions, and additional IBA research.

The proposed responses to the Grand Jury findings and recommendations are presented below.



**Office of Independent Budget Analyst**

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556



## FINDINGS

For each finding in the Grand Jury Report, the City Council shall respond by either agreeing with the finding or disagreeing wholly or partially with the finding. For each finding to which the response is disagree wholly or partially, the response shall specify the portion of the finding that is disputed and include an explanation of the reasons for the disagreement.

**Finding #01:** *Without the protections afforded by being designated as an independent entity in the City Charter, the San Diego City Ethics Commission is subject to elimination by repeal of the ordinance that established it.*

**Proposed Response:** *Partially Disagree*

The City Council Partially Disagrees with the Grand Jury's finding because designating the Ethics Commission as an independent agency is not the only protection afforded to the Commission in regards to elimination. The City Council does retain full control of the Commission existence and all of its procedures. In addition, the Council could change the Commission's purposes and repeal the ordinance establishing it. However, what the Grand Jury has not taken into consideration is the nature of the City's Ordinance process which is deliberative and open to the public.

Typically, each ordinance must first be vetted at a City Council Committee hearing, where the City Department, City Attorney, Mayoral staff, the Independent Budget Analyst, and the public have a chance to review and comment. If the Ordinance proceeds to the full City Council, parties are again able to testify and a majority vote of the City Council must be received for it to pass and become effective. This deliberative and open process is a protection in itself. A decision to eliminate the Ethics Commission could not occur without the close scrutiny of the citizens of the City.

**Finding #02:** *Some officials who have been fined for minor violations have expressed a concern that they may be perceived as unethical.*

**Proposed Response:** *Agree*

There could be unwarranted implications such as the perception of being "unethical" associated with an "ethics commission fine" levied for a relatively routine violation such as the late filing of a lobbying disclosure report or a Statement of Economic Interests.

**Finding #03:** *The majority of the activity of the Ethics Commission deals with monitoring compliance with the City's election campaign and lobbying laws and providing training in those laws.*

**Proposed Response:** *Partially Disagree*

Based on statistics provided by the Ethics Commission on the number of complaints received and the time spent on education related to campaign, lobbying, and ethics laws, the Grand Jury's statement is correct for calendar year 2009. However, as the following tables indicate, the Commission's focus is based on the number of complaints and requests for informal advice received and can vary from year to year.

<b>Complaints Received Concerning Alleged Violations</b>		
<b>Type of Complaint</b>	<b>2009</b>	<b>2008</b>
Violation of Election Campaign Laws	13%	22%
Violation of Lobbying Laws	50%	6%
Violation of Ethics Laws	30%	67%
Other Complaints (Generally outside the Ethics Commission's Jurisdiction)	7%	5%
<b>Total Complaints related to Election Campaign and Lobbying Laws</b>	<b>63%</b>	<b>28%</b>

<b>Requests Received for Informal Advice (Classified by Ethics Commission staff as Education)</b>		
<b>Type of Complaint</b>	<b>2009</b>	<b>2008</b>
Election Campaign Laws	21%	28%
Lobbying Laws	25%	31%
Ethics Laws	54%	41%
<b>Total Requests for Informal Advice related to Election Campaign and Lobbying Laws</b>	<b>46%</b>	<b>59%</b>

**Finding #4:** *A change of the name of the Ethics Commission to something analogous to that of the State's Fair Political Practices Commission would allay the concerns of City officials and more accurately reflect the actual work of the Commission.*

**Proposed Response:** *Agree*

Ethics Commission staff has stated that the issue of a name change has periodically been discussed during the course of other Commission business. Commissioners have generally expressed their view that a name change would help alleviate some of the unwarranted implications associated with an "ethics commission fine" levied for relatively routine violations such as the late filing of a lobbying disclosure report or a Statement of Economic Interests. Commissioners have also indicated that the payment of a nominal Commission fine should not be construed as an indication that a particular respondent is "unethical". It is possible that a name change could help mitigate this perception problem.

**Finding #5:** *The power to subpoena witnesses granted to the Ethics Commission by ordinance is provided only for administrative hearings and does not extend to investigations.*

**Proposed Response:** *Agree*

**Finding #06:** *The power to subpoena witnesses for formal investigations would streamline the process and could eliminate the need for more costly administrative hearings.*

**Proposed Response:** *Disagree*

At the October 13, 2008 City Council Hearing and at the September 16, 2009 Rules Committee meeting, the Executive Director and Commissioners of the Ethics Commission spoke to the benefits of issuing subpoenas for testimony during the investigation process. Benefits they discussed include:

- Such a subpoena would add a layer of protection to witnesses as many do not want to appear overly cooperative to superiors by providing the Commission with information. Due to the inability to issue such subpoenas, witnesses have not been as willing to speak with the Commission.
- The ability to issue investigative subpoenas may help eliminate the need for a full administrative hearing, which is held publicly and utilizes more resources of both the Ethics Commission and the individual on trial.

However, in a September 11, 2009 City Attorney's Office Report to the Rules Committee, they cautioned that the expansion of subpoena authority should not be "granted lightly" and that certain protections should be provided to witnesses that are compelled to testify at the investigative stage of Commission proceedings. On September 16, 2009 the Rules Committee discussed expanding the Ethics Commission's subpoena power and no action was taken and since that time no further discussion has occurred on this issue.

**Finding #07:** *The two vacancies on the seven member Ethics Commission endanger its ability to levy fines and to establish a quorum for its meetings.*

**Proposed Response:** *Agree*

On April 27, 2010 the City Council confirmed the appointments of John O'Neill and Graydon "Bud" Wetzler and reappointed William Ashley "Lee" Biddle and Clyde Fuller to the Ethics Commission. Since that time, two additional members have left the Commission due to term limits and resignation. The Mayor's Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.

**Finding #08:** *The State Fair Political Practices Commission is not equipped to perform regular audits of County elections, does not have sufficient staff to investigate conflict of interest allegations against local officials, and does not enforce City and County lobbying laws.*

**Proposed Response:** *Agree*

The state's Fair Political Practices Commission [FPPC] educates public officials and candidates on the requirements of the Political Reform Act, and investigates alleged violations of the Act. The FPPC's jurisdiction extends to public officials and candidates throughout the State of California, and to entities that lobby state officials. By comparison, the Ethics Commission operates locally, and its jurisdiction extends to City Officials, candidates for elective City office, and entities that lobby City Officials.

Although the City has incorporated some state law provisions into its Election Campaign Control Ordinance and its Ethics Ordinance, the City has also adopted many laws that are of a purely local nature. The FPPC does not regulate any of these local laws. For example, the Ethics Commission, not the FPPC, has jurisdiction over the City's contribution limits, the 180-day vendor debt rules, and online filing requirements for City candidates. In addition, the FPPC does not have jurisdiction over the City's lobbyists; the lobbying provisions in the Political Reform Act pertain solely to individuals who lobby state officials. By having a uniquely local perspective, the Ethics Commission is able to

provide education and enforcement in a manner particularly suited to local officials, local candidates, and local lobbyists.

## RECOMMENDATIONS

For each recommendation in the Grand Jury Report, the City Council shall respond that the recommendation either has been implemented, has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented.

**Recommendation 10-01: Place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent body.**

**Proposed Response: Will not be implemented**

If the City Council desired to eliminate or alter the Ethics Commission they would need to amend the Municipal Code through an Ordinance. This process is deliberative and allows the public and stake holders multiple opportunities to comment on the proposed changes. Typically each ordinance must first be vetted thorough a City Council Committee hearing, where the City Department, City Attorney, Mayoral staff, the Independent Budget Analyst, and the public have a chance to review and comment. If the Ordinance proceeds to the full City Council, parties are again able to testify and a majority vote of the City Council must be received for it to pass and become effective. Based on the deliberative and openness of the current process, the City Council does not deem it necessary to put a measure on the ballot to establish the Ethics Commission as an independent body.

In addition, it is important to note that the current estimate to put a five page measure on the November ballot is \$250,000. Although it would be too late to put a measure on the November 2010 ballot related to the Ethics Commission, this estimate gives a good indication of the expected cost to the City's General Fund if a measure was put on a future ballot.

**Recommendation 10-02: Enact an ordinance changing the name of the Ethics Commission to the San Diego Political Practices Commission, or a substantially similar name, to be more indicative of its mission and activities.**

**Proposed Response: Requires further analysis**

The Ethics Commission is established by ordinance of the Council and codified in the San Diego Municipal Code. In particular, section 26.0403 states: "There is hereby created

a City of San Diego Ethics Commission consisting of seven (7) members, who shall serve without compensation.”

Because the Ethics Commission was established by ordinance, the Office of the City Attorney has advised that the Council can change the name of the Ethics Commission by adopting an ordinance amending the San Diego Municipal Code. However, because Charter sections 40 and 41(d) reference the “Ethics Commission,” the City Attorney recommends that the ordinance continue to establish the “Ethics Commission,” but that the Commission will be known by another name. For example, the Code could be revised to state: “There is hereby created a City of San Diego Ethics Commission, to be known as the “San Diego Political Practices Commission.”

The City Council President has stated that he will docket this item at a Rules Committee meeting for discussion in the fall.

**Recommendation 10-03:**     **Enact an ordinance amending Chapter 2, Article 6, Division 4 of the San Diego Municipal Code to allow the Ethics Commission to issue witness subpoenas during Commission investigation with an affirmative vote of at least four Commission members. Said amendment should contain safeguards to protect the rights of those witnesses.**

**Proposed Response:** Will not be implemented

On September 16, 2009, the Rules Committee discussed expanding the Ethics Commission’s subpoena power and no affirmative action was taken.

**Recommendation 10-04:**     **Docket a discussion of proposed changes in the method of appointing Ethics Commissioners at an upcoming meeting of the Rules Committee (Or other appropriate Council Committee).**

**Proposed Response:** Will be implemented in the future

The City Council President has stated that he will docket this item at a Rules Committee meeting for discussion in the fall. It should be noted that in a March 12, 2010 response to Councilmembers Frye and DeMaio regarding reforms to the Appointment Process for the Ethics Commission, the City Attorney’s office provided the following information:

“Charter section 41 states: “[t]he Mayor shall appoint, subject to the confirmation of the Council, members of all commissions established pursuant to this section.” As long as you do not infringe upon the Mayor and Council’s delineated powers

under section 41, a process could be established to provide advice and recommendations.”

**Recommendation 10-05:   Appoint or re-appoint Commission members to fill all existing vacancies by the present method of making such appointments.**

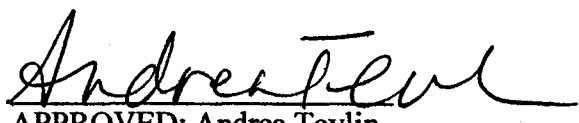
**Proposed Response: Has been implemented and will be implemented in the future**

On April 27, 2010 the City Council confirmed the appointments of John O'Neill and Graydon “Bud” Wetzler and reappointed William Ashley “Lee” Biddle and Clyde Fuller to the Ethics Commission. Since that time, two additional members have left the Commission due to term limits and resignation. The Mayor’s Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.



Jeffrey Sturak  
Deputy Director

Attachment



APPROVED: Andrea Tevlin  
Independent Budget Analyst

RESOLUTION NUMBER R- 305970

DATE OF FINAL PASSAGE JUL 12 2010

APPROVING THE CITY COUNCIL'S RESPONSE TO THE  
2009-2010 SAN DIEGO COUNTY GRAND JURY REPORT  
TITLED "ETHICAL POLITICAL PRACTICES –  
ENFORCEMENT OF CAMPAIGN AND LOBBYING LAWS"

WHEREAS, on April 27, 2010 the 2009-2010 San Diego County Grand Jury (Grand Jury) filed a report titled "Ethical Political Practices – Enforcement of Campaign and Lobbying Laws" (Report) that requested a response from the Mayor and City Council; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the City Council must respond to the Report by July 26, 2010; and

WHEREAS, the Grand Jury assessed several issues relating to the City of San Diego Ethics Commission and requested that the City Council respond to each of the findings and recommendations 10-01 through 10-05 in the Report that relate to the City of San Diego; and

WHEREAS, the Office of the Independent Budget Analyst has proposed a response to the Report as set forth in IBA Report No. 10-61 dated June 29, 2010, for the City Council's consideration; and

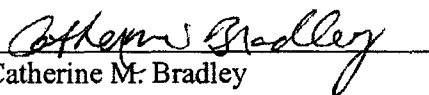
WHEREAS, under Charter section 280(a)(1) this resolution is not subject to veto by the Mayor because this matter is exclusively within the purview of the City Council and not

affecting the administrative service of the City under the control of the Mayor; NOW,  
THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and adopts as its own the response to the 2009-2010 San Diego County Grand Jury Report titled ""Ethical Political Practices – Enforcement of Campaign and Lobbying Laws" as set forth in IBA Report No. 10-61 dated June 29, 2010.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than July 26, 2010.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Catherine M. Bradley  
Chief Deputy City Attorney

CB:sc  
06/28/10  
Or.Dept:IBA  
R-2010-966

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